IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 20471 of 2004

Between:

Razia Banu, W/o. Syed Ali,
R/o. 1-6-662, Jamistanpur, Musheerabad, Hyderabad.

..... PETITIONER

AND

The Commissioner, Municipal Corporation of Hyderabad.
Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or orders one in the nature of Writ of Mandamus by declaring the inaction of the respondent for demolishing of the premises bearing No.1-6-662, Jamistanpur, Musheerabad, Hyderabad of the second floor in spite of pending of the file in file No. 662/6/1/99 dt. 27/12/99 and also the representation made on 8-9-2004 in view of the observation made in A.S.292/2002 on the file of the XII Addl. Chief Judge, City Civil Court, Hyderabad and declare the same as totally illegal, arbitrary against the principle of natural justice

For the Petitioner: MR.SURESH SHIV SAGAR, Advocate

For the Respondent : MR.RAMA RAO GANTA, SC for MCH

The Court made the following :

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ORDER

On petitioner making constructions in deviation to the sanctioned plan as per the permission obtained in Permit No.662/6/1/81 dt. 20-8-1981, a notice was issued under Sec. 452 of the Hyderabad Municipal Corporation Act,1955 (for short "the Act") pointing out deviations followed by notice under Section 631 of the Act. As there was threat of demolition, the petitioner filed OS No.6402/99 on the file of II Additional Junior Civil Judge, City Civil Court, Hyderabad seeking permanent injunction restraining the officials of the Municipal Corporation from demolishing the 2nd floor of the suit building, which was dismissed on 9-9-2004. Aggrieved by the same, the petitioner preferred AS No.292/2002 before XII Additional Chief Judge (Fast Tract Court), City Civil Court, Hyderabad, which was dismissed on 22-4-2004. While dismissing the appeal, the appellate court made an observation that appellant-plaintiff could have approached the Municipal Corporation with a revised plan for regularization of the 2nd floor by payment of necessary compound fee, if rules permit since it is the case of the appellant-plaintiff that the construction of 2nd floor is not inconvenient to anybody in the locality, liberty was granted to approach the Municipal Corporation with necessary revised plan and application seeking for regularization of the construction of 2nd floor and on such application, Municipal Corporation is at liberty to consider the same in accordance with the law. Since no such application is filed, she cannot question the legality of notices issued by the Municipal Corporation. On such dismissal, the present writ petition has been filed stating that the application filed by the petitioner dt. 27-12-99 in respect of the said construction is still pending and until such application is disposed of, the respondents should be restrained from demolishing the structures.

Learned counsel for the petitioner submits that until representation filed by the petitioner dt.27-12-1999 is disposed of respondents cannot remove the constructions so made. He further submits that no notice whatsoever was issued to the petitioner on dismissal of the appeal and without following due procedure, the respondents cannot demolish the structures even if they are made contrary to the sanctioned plan.

The very fact that no such endeavor was made before the appellate court about filing of the representation nor it was taken note by the appellate court but liberty was granted to the petitioner to approach the Municipal Corporation with revised plan. In view of the same, the

submissions made by the learned counsel cannot be countenanced for the reason that once Municipal Corporation issued notice, which was the subject matter of suit and appeal, which were dismissed, no further notice is required to be issued by the Municipal Corporation.

The writ petition is accordingly dismissed. However, the petitioner is at liberty to avail remedies as per the observations made by the appellate court, if any.

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A.GOPAL REDDY,J

Dt. 8-11-2004

kmr

To

1. The Commissioner, Municipal Corporation of Hyderabad.
   Hyderabad.

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